

Original Filed 12/22/06

NOT FOR CITATION
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

FELIX KELLY PRAKASAM, et al.,

Defendants.

Case Number C 05-00743 JF
ORDER¹ CONFIRMING SALE
[re: docket no. 45]

Plaintiff United States of America moves for an order confirming sale of property located at 1174 San Diego Drive, Salinas, California (“the property”). Defendants Felix K. Prakasam and Liliana P. Prakasam oppose the motion. For the reasons discussed below, the Court will grant the motion.

I. BACKGROUND

On March 30, 2006, this Court granted summary judgment for Plaintiff and issued a decree of sale of the property. On July 5, 2006, this Court denied Defendants’ motion for reconsideration (“July 5th Order”).

¹ This disposition is not designated for publication and may not be cited.

1 On July 14, 2006, Defendants, proceeding *pro se*, filed a “Motion to dismiss action and
2 set aside summary judgment and decree for lack of subject matter jurisdiction and for emergency
3 ex parte motion to enforce the automatic stay as provided by statute and to enjoin the
4 enforcement of the decree of sale.” Defendants asked again that this Court reconsider its grant of
5 summary judgment for Plaintiff. On July 17, 2006, the Court denied the motion (“July 17th
6 Order”). The Court explained that while it understood “that it will cause harm and loss to
7 Defendants for them to vacate their residence, [it] cannot consider repetitive motions for
8 reconsideration.” July 17th Order 2. The Court instructed Defendants that if they believe “that
9 this Court’s ruling is erroneous, they must seek relief in the Court of Appeals; no further motions
10 or requests for reconsideration will be entertained.” *Id.* On August 18, 2006, Defendants filed
11 notice of appeal with the Ninth Circuit.

12 Plaintiff states that on August 30, September 6, September 13, and September 20, 2006,
13 notice of the sale of the property at public auction was published in The Herald, a Montgomery
14 County newspaper. Plaintiff also states that on September 21, 2006, the property was sold at
15 public auction at the Monterey County Courthouse for a sale price of \$600,000 (“the sale”).
16 Plaintiff states that the purchasers deposited \$10,000 with the United States Marshals pending
17 confirmation of the sale by the Court.

18 On November 15, 2006, Plaintiff moved to confirm the sale of the property. Defendants
19 objected to the sale on eight bases: (1) this Court lacks subject-matter jurisdiction; (2)
20 Defendants have a pending Collection Due Process Hearing pursuant to IRC, Section 6330,
21 which Plaintiff has not denied; (3) Defendants did not have an opportunity to respond to new
22 facts and issues that Plaintiff raised in its reply; (4) the assessment and tax lien which Plaintiff
23 relies upon in its enforcement action are time barred; (5) the IRS accepted Defendants’ Amended
24 Tax Return for 1997, filed on September 23, 2003, pursuant to the “Stipulation [sic] Settled
25 Issues;” (6) after accepting Defendants’ Amended Tax Return for 1997, Plaintiff issued
26 Defendants legal notice of disallowance of a refund for \$6,664.00 on their 1996 taxes; (7)
27 Plaintiff failed to issue a mandatory Notice of a Federal Tax Lien to Defendants; and (8) Plaintiff
28 failed to issue a mandatory Notice and Demand to Defendants.

The Court heard oral argument on December 22, 2006.

II. LEGAL STANDARD

28 U.S.C. § 2001(a) provides that

[a]ny realty or interest therein sold under any order or decree of any court of the United States shall be sold as a whole or in separate parcels at public sale at the courthouse of the county, parish, or city in which the greater part of the property is located, or upon the premises or some parcel thereof located therein, as the court directs. Such sale shall be upon such terms and conditions as the court directs.

Notice of a public sale must be given pursuant 28 U.S.C. § 2002, which provides that

[a] public sale of realty or interest therein under any order, judgment or decree of any court of the United States shall not be made without notice published once a week for at least four weeks prior to the sale in at least one newspaper regularly issued and of general circulation in the county, state, or judicial district of the United States wherein the realty is situated.

III. DISCUSSION

1. Compliance With Statutory Requirements for Sale

Notice of the sale was published once a week for four weeks as required by 28 U.S.C. § 2002. Nothing in the manner in which the sale was conducted appears to conflict with 28 U.S.C. §§ 2001-2002. Defendants do not object to the form of the sale or the notice preceding the sale. Accordingly, the Court concludes that the sale conforms with the applicable statutory requirements.

2. Objections to Sale on Other Grounds

As noted above, Defendants object to the sale on eight grounds² which pertain to the substantive legal arguments they have made throughout this case, rather than to any specific objection to the form of the sale or the notice given prior to the sale. Defendants have argued

² As stated above, the eight grounds argued by Defendants are that: (1) this Court lacks subject-matter jurisdiction; (2) Defendants have a pending Collection Due Process Hearing pursuant to IRC, Section 6330, which Plaintiff has not denied; (3) Defendants did not have an opportunity to respond to new facts and issues that Plaintiff raised in its reply; (4) the assessment and tax lien which Plaintiff relies upon in its enforcement action are time barred, (5) the IRS accepted Defendants' Amended Tax Return for 1997, filed on September 23, 2003, pursuant to the "Stipulation Settled Issues;" (6) after accepting Defendants' Amended Tax Return for 1997, Plaintiff issued Defendants legal notice of disallowance of a refund for \$6,664.00 on their 1996 taxes; (7) Plaintiff failed to issue a mandatory Notice of a Federal Tax Lien to Defendants; and (8) Plaintiff failed to issue a mandatory Notice and Demand to Defendants.

many of these grounds before the Court previously. The Court rejected five of the arguments by Defendants in denying the motion for reconsideration:

(1) Defendants did not have an opportunity to respond to new facts and issues that Plaintiff brought up in its reply supporting its motion for summary judgment; (2) the assessment and tax lien on which Plaintiff bases its enforcement action are time barred; (3) this Court lacks jurisdiction to enforce a tax lien and assessment that is time barred; (4) because the IRS has accepted Defendant's Amended Tax Return for 1997, filed on September 23, 2003, Defendants owe no taxes; however, Plaintiff has misrepresented that the tax assessment was valid when it was in fact void; and (5) Defendants have filed a request for a Collection Due Process Hearing.

July 5th Order 2. These five arguments overlap almost perfectly with the first six grounds that defendants argue in opposition to the instant motion. Additionally, Defendants provide no legal authority holding that, even if true, the two remaining asserted bases in opposition to the motion support a finding that Defendants have no tax liability or provide a basis for reconsidering the Court's earlier orders in this case.

As the Court indicated in its July 17th Order, the Defendants' remedy for any perceived error in the Court's decisions lies with the Ninth Circuit, not in repeated motions for reconsideration. Defendants may not use their opposition to this motion as a vehicle by which to argue again for reconsideration. The Court will not deny the motion on grounds previously argued or grounds which otherwise pertain to the substantive legal rights, claims, and defenses previously litigated in this case.

IV. ORDER

Good cause therefor appearing, IT IS HEREBY ORDERED that the motion to confirm sale is GRANTED.

DATED: December 22, 2006.


 JEREMY FOGEL
 United States District Judge

1 This Order has been served upon the following persons:

2 Kathleen A. Andleman kathleen.andleman@ftb.ca.gov,

3 Dean A. Christopherson dac@calaw.com

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7 Notice will be delivered by other means to:

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